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FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

May 11, 1990

MEMORANDUM

TO: The Commission

FROM: N. Bradley Litchfield 
Associate General Counsel

SUBJECT: Background Material for AOR 1990-7

Attached is a letter from counsel to Schroeder Fund for the Future which was sent to the Reports Analysis Division in January, 1990. It is being circulated as background material for AOR 1990-7. This letter appears on the public record.



SNEAD AND PROMIS

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January 20, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
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Peter Kell Jr.
Chief, Authorized Branch
Reports Analysis Division
Federal Election Commission
Washington, DC 20463

Re: Representative Patricia Schroeder and Schroeder Fund for the Future, Inc.

Dear Mr. Kell:

This letter is on behalf of Representative Patricia Schroeder and is in response to your letter to her of December 20, 1989.

Your letter advised her that "Schroeder Fund for the Future, Inc. is filing reports of receipts and expenditures (FEC FORM 3) that appear to be for the 1990 election." You state that she must either disavow the activities by stating that she is not a candidate or redesignate her principal campaign committee.

Your letter was sent to Representative Schroeder's congressional office in Washington. It was forwarded from there to my office in Denver because this firm represents Ms. Schroeder on election campaign matters. It reached us on December 29 and came to my attention on January 2. The following day I wrote you to request a reasonable extension of time to allow for the loss of time to the holiday season and the slow mail relay. My letter to you was sent by certified mail on the third and our return receipt indicates that it was received by the Commission on January 8. We have had no response from you to our extension request.

Yesterday, January 19, we noted the absence of a response from you. Out of an excess of care, we decided to call to confirm that our request had reached you personally, though we knew that it certainly had in the official sense, and confirm that you had granted the request. Before making the call, we assumed that the lack of a response was caused by some delay in communicating your response to us. Given these circumstances, I expect that you will understand our surprise when my partner, Victoria Promis, was told by Pat Sheppard of your Reports Analysis Division that the Commission does not grant extensions of time in any circumstance and that Representative Schroeder must adhere to the orig-

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inal schedule in responding to your December 20 letter.

Our client and we now face a dilemma which is not of our making. We are forced to respond without a fair opportunity to consider how we may wish to respond. Our capacity to make full use of the procedure set forth in the statute has been circumscribed by the lack of a reasonable response to our extension request.

We felt we heard in Ms. Sheppard's comments on the phone Friday a predisposition to act on anything short of a disavowal or re-designation by declaring one or the other to have occurred by default. If the Commission were to take such action, it could produce a variety of negative and damaging results for Ms. Schroeder. Thus, we find ourselves compelled to submit a response in an attempt to forestall unilateral action on your part, even though we are not in a position to prepare our response effectively.

It follows, then, that the response set forth below is submitted under protest of the Commission's failure to provide us with an answer of any kind to our reasonable request for an extension of time. By answering as set forth below, we do not waive the right to complain that this act of fundamental unfairness precludes the Commission from taking action according to its original timetable.

Representative Schroeder's response is in two parts. First, the primary response is that the Commission's interpretation of the reports of Schroeder Fund for the Future, Inc. and her candidate activities is incorrect, so that your demand that she disavow the activities or redesignate her principal campaign committee is inappropriate and, therefore, should be withdrawn. Should the Commission disagree with this conclusion after considering the details provided below, then Representative Schroeder's alternative response is to disavow the activities of Schroeder Fund for the Future, Inc. as they may pertain to the 1990 election cycle.

We must first observe that your letter of December 20 is difficult for us to interpret. The problem is in understanding how you consider her Congressional candidacy to relate to the Fund. You refer to a 1990 candidacy and then speak of notifying the Commission that she is not a candidate. You also provide that one of her options is to "redesignate" her principal campaign committee.

These aspects of the letter lead us to believe that your concern may be centered on her Congressional candidacy and the existence

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of two committees bearing her name. Representative Schroeder is presently a candidate, within the meaning of the FECA, for the office of Representative for the First Congressional District of Colorado for the 1990 election. From our vantage point, we have always seen the Fund as unrelated to the Congressional candidacy. Its charter statements were strictly in terms of other Federal offices. Care has been exercised to avoid any activities which influence the Congressional election. It seems unlikely that you would intend the inconsistent reactions of a declaration that she is not a candidate, when she is, or that she redesignate the Fund as her principal campaign committee, to the exclusion of her true Congressional campaign committee, but we are truly uncertain about your concern and the options you provide.

We have always understood the law to permit a person to be a candidate for two offices simultaneously and to permit a person to be a candidate for one office and to be engaged in testing the waters for another. In 1987, Ms. Schroeder was in this latter situation as a candidate for Congress in 1988 and testing the presidential waters for the same year. Though significant testing the waters activities ceased in 1987, it would not, in our view, necessarily follow that the dormant testing the waters committee must then be associated with a person's candidacy for a different office in a later election cycle.

Addressing the matter on the basis that the candidacy to which you refer is that of a presidential aspirant, the following additional facts and circumstances are relevant. Representative Schroeder is not a candidate in any sense for any other office for which an election will occur in 1990. She is not now, nor has she been, a candidate for any office in 1992.

Ms. Schroeder tested the waters for the Presidential election of 1988 during the summer and fall of 1987. Schroeder Fund for the Future, Inc. (the "Fund") is the exploratory committee that assisted her in testing the waters in 1987. The Fund was then known as Schroeder 1988?, Inc. Though Ms. Schroeder was aware that the exploratory committee was not a committee subject to the reporting requirements of the FECA, she prevailed upon the committee to voluntarily file reports of its receipts and disbursements with the FEC in order to make the same full public disclosure that the FECA required of true candidates. Your files contain the voluntary reports of the Fund.

At the conclusion of the testing the waters effort in 1987, the Fund had a surplus of money. Ms. Schroeder communicated her decision not to run for the Presidential nomination and the Fund

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offered to refund the excess to its contributors. After refunds were made as requested, a surplus still remained. Following the winding down of the 1987 exploratory activities, which lasted into 1988, the Fund has limited itself primarily to maintaining the mailing list it accumulated during the testing the waters effort through follow-up mailings. Three mailings were conducted, two of which sought no response from recipients, but provided information on address changes. The other mailing provided the same information and sought donations to cover list maintenance costs. The Fund does not concern itself with, nor support, her candidacy for the office of Representative.

We recognize that the term "candidate" is a carefully defined term. In order for a person to become a candidate, contributions must be made or expenditures received by or on behalf of the person. "Contribution" and "expenditure" are also statutorily defined terms. The FECA defines a contribution as a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. (Emphasis added). Similarly, an expenditure is defined as a purchase, payment, distribution, loan, advance deposit or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. (Emphasis added). In all instances in which a person is deemed by law to have become a candidate, the purpose behind the receipt of a contribution or the disbursement of an expenditure must relate to influencing a Federal election. Thus, for Ms. Schroeder to be required to disavow or confirm the actions of another person depends on the purpose of the Fund's activities.

No activities to date of the Fund have met the definition of contribution or expenditure. It has not influenced any election for Federal office. It will not influence any election for Federal office in 1990. Donations were not solicited for the purpose of influencing any election for Federal office. It continues to file voluntary reports to the FEC because it anticipates that it may, in some future election cycle, meet the legal definitions which will require it to register and report. It has not met those definitions at this time, nor will it in 1990. Of course, should that reality for any reason change, both Ms. Schroeder and the Fund are aware of the legal obligations imposed by the FECA for registration and reporting and will immediately notify the FEC of the change of status.

In conclusion, the Fund has not, does not and will not participate in or support Representative Schroeder's campaign for Con-

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gress in 1990. The activities of the Fund, specifically its receipts and disbursements, do not meet the definition of contributions or expenditures, as those terms are defined by statute. In order for Ms. Schroeder to become a candidate for another office, either she must voluntarily declare her candidacy or the activities of another person regarding her must rise to the level of producing contributions or expenditures under the law. It is the position of both the Fund and Ms. Schroeder that such has not occurred.

I personally serve as a director and legal advisor to the Fund. On its behalf, I can say that we have long recognized that a dormant testing the waters committee with excess money is unique. We have found little guidance in the law, regulations and advisory opinions that will assist us in conducting the activities of committee. It is for this reason that I have written you in the past on behalf of the Fund to explain its situation and to maintain close contact so that the Fund's activities and existence would not come as a surprise to the Commission at some time in the future. It was also for this reason that we have filed the voluntary reports. At the date of your letter, the Fund was already in the process of examining its particular status under the law with respect to what its future activities could and should be. The arrival of your letter spurred the Fund's directors to hasten the consideration. It was decided that the uncertainties of the Fund's status would best be resolved through an advisory opinion from the Commission. We began work on the request for the opinion in early January and scheduled it for completion and delivery to the Commission at the end of this month. We will continue with it and submit it as originally planned.

As stated above, if she is lawfully compelled to make a choice between the two alternatives set forth in your December 20 letter, then I am authorized by Representative Schroeder to disavow the activities of Schroeder Fund for the Future, Inc. as being unconnected with her candidacy for the House of Representatives in 1990 and to acknowledge that she is not a candidate for any other office.

Sincerely,



Maxwell A. Snead, Jr.

MAS/s
Enclosure